

## **Employee Discipline**

*Five common misunderstandings about employee discipline and documentation*

### **Disciplinary Action**

There is no legal definition of what constitutes a write-up, nor is there a definition of what is required to be in an employee's personnel file. So, recollections about verbal warnings, e-mails, letters, even notes on napkins can be evidence to support an employer's position that an employee was terminated because of performance issues. Employers should remember that if an employee challenges the reason for their termination, having written documentation on file can be helpful in supporting the employers' position.

### **Verbal warnings**

If there is no record of verbal warnings it is very difficult to prove at a later date that the employee had been counseled about the issue. Employers should always document a verbal warning in some manner, such as in the employee's file, manager's log or even e-mailing themselves the specifics about the verbal warning. By preparing an e-mail and sending it to themselves, it creates a great time-stamped record that is excellent evidence should there ever be any litigation concerning a termination.

### **Signatures on disciplinary documents**

Some employers do not think a write-up for an employee is valid unless the employee signs the write-up, but this is not true. While it is a good policy to have some system that proves the employee was presented with the write-up, it is not required that the employee sign the document. Many times the employee will refuse to sign such documents because they do not agree with them. One way to alleviate this is to provide a line on the document that states the employee does not necessarily agree with the write-up, but is signing the document only to acknowledge receipt. Another method to avoid the argument that the employee never received the written warning is to email the employee. This creates a great record of when the warning was prepared and sent to the employee.

### **Progressive disciplinary policy and Termination**

Employers may choose to implement a progressive discipline policy that starts discipline with a verbal warning and progresses to a second or third written warning prior to termination. However, employers should be careful to preserve the employee's at-will status and reserve the right to not follow the progressive disciplinary system at its sole discretion. As long as the employee is at-will, they can be terminated at any time, even after their first small infraction of a company policy.

## **Disciplinary documentation**

While write-up and counseling should address the overall issue that the employee needs to improve, employers should avoid making general statements without providing specific examples. For example, instead of writing an employee up for having a poor attitude, the employer should provide a specific performance issue. The employer should document the time, date and facts of the incident. Write ups should also list the conduct that is expected of the employee in the future.

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